STATE OF RHODE ISLAND SUPERIOR COURT
PROVIDENCE S.C.

CODY ALLEN ZAB

v. P.M. 17-4195

RHODE ISLAND DEPARTMENT
OF CORRECTIONS, et al.

PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGEMENT ON AFFIRMATIVE DEFENSES ASSERTED BY DEFENDANTS

I. BACKGROUND.

Plaintiff alleges that he was injured while an inmate at the Adult Correctional Institutes (ACI). Plaintiff has been sentenced to a sentence of life in prison. (Exh A). As a result of this sentence, the Defendants' have alleged an affirmative defense of R.I.G.L. § 13-6-1 et seq.

II. FACTS.

Plaintiff has asserted claims in his complaint against the Defendants in this case under 42 U.S.C. § 1983 seeking redress for violations of his constitutional rights specifically the Eighth Amendment to the United States Constitution and for negligence in creating a hazardous condition of confinement or allowing said condition to exist. Both of the alleged violations result in Plaintiff being burned when he made contact with a pipe that was not insulated and very hot.

III. STANDARD.

The purpose of a summary judgment motion is to determine if material issues of fact exist upon which a trial should be held. Here, Plaintiff claims that the statute is unconstitutional as a matter of law, accordingly there are no facts to interpret.

When ruling on a question of a statute's unconstitutionality, the party raising the issue of unconstitutionality has the burden of proving that fact beyond a reasonable doubt. State v. Garnetto, 75 R.I. 86, 92 (1949); see also Prata Undertaking Co. v. Bd. of Embalming & Funeral Directing, 55 R.I. 454, 461 (R.I. 1936). Unless an act is unmistakably in excess of legislative power, a court should not construe a statute in a manner that renders it unconstitutional. See In re Christopher S., 776 A.2d 1054, 1057 (R.I 2001). This Court is required to "make every reasonable intendment in favor of the constitutionality of a legislative act" and draw all presumptions in favor of its constitutionality. Garnetto, 75 R.I. at 92 (citing Gorham v. Robinson, 57 R.I. 1 (R.I. 1936)).

IV. ARGUMENT.

The Defendants' affirmative defense of R.I.G.L. § 13-6-1, the so called "Civil Death Act" fails as the statute is: 1) Unconstitutional under the Supremacy Clause of the United States Constitution as it denies the Plaintiff remedies that are secured to him by 42 U.S.C. § 1983 to redress violations of his rights under the Eighth Amendment to the United States Constitution; 2) R.I.G.L. § 13-6-1 is unconstitutional under Article I of the Rhode Island Constitution Sections 2 and 5 in that it fails a strict scrutiny analysis because it violates Plaintiff fundamental rights as the statute violates his right to substantive due process, equal protection under the laws, and the right to a remedy from the Defendants' for their negligence and/or the State's violation of the Eighth Amendment.

A. History of Civil Death Statutes.

"A look at the historical past indicates that the ancient Greeks were the first to strip criminals of their civil rights, including the right to appear in court, vote, make speeches, attend assemblies, and serve in the army. In due course, civil-disability laws became part of

the legal systems in England, Europe, and the United States. Today, Rhode Island is one of a very small number of states that still retain civil-death statutes. See generally, Special Project, The Collateral Consequences of a Criminal Conviction, 23 Vand.L.Rev. 929 (1970)." Bogosian v. Vaccaro, 422 A. 2d 1253, n1 (RI 1980). In ancient Greece, those criminals 'pronounced infamous' were unable to appear in court or vote in the assembly, to make public speeches, or serve in the army. ... European lawmakers later developed the concept of 'civil death, which put an end to the person by destroying the basis of legal capacity, as did natural death by destroying physical existence.' " (Ewald, " Civil Death": The Ideological Paradox of Criminal Disenfranchisement Law in the United States (2002) 2002 Wis. L.Rev. 1045, 1059-1060 (Ewald, Civil Death [230 Cal.Rptr.3d 539])). A civil death sentence extinguished the civil, legal, and political rights of people convicted of certain offenses. Without those rights, convicts could not bring civil actions or perform any legal function. (Saunders, Civil Death— A New Look at an Ancient Doctrine (1970) 11 Wm. & Mary L.Rev. 988, 989, 992-994.)

Because civil death revoked the full spectrum of rights of people convicted of certain offenses, it was historically "limited to very serious crimes" and imposed " only upon judicial pronouncement in individual cases." (Ewald, Civil Death, supra, 2002 Wis. L.Rev. at p. 1061; see 4 Blackstone, Commentaries 373 [civil death applies only " when it is ... clear beyond all dispute that the criminal is no longer fit to live upon the earth, but is to be exterminated as a monster and a bane to human society."].) In the United States, however, this distinction eroded in the years following the Civil War as federal constitutional rights began to constrain the activities of individual states. (Grady, Civil Death is Different (2013) 102 J. Crim. L. & Criminology 441, 447; see U.S. Const., 14th Amend. [equal citizenship rights regardless of race]; U.S. Const., 15th Amend. [universal male suffrage]; compare Barron v. The Mayor and

City Council of Baltimore , 32 U.S. 243, 247 (1883)[5th Amend. takings clause limited only federal power and did not apply to the states] with Chicago, Burlington & R'D v. Chicago , 166 U.S. 226 (1897) [takings clause applied to states via 14th Amend.].) Many states began to impose forms of civil death broadly and automatically. "The aberrant institution of 'civil death' . . . [was] simply a denial of man himself." Miró Cardona, El sistema penal de Puerto Rico, 35 Rev. Jur. U.P.R. 375, 379 (1966); Hernández Cruz v. Sria. de Instrucción, 117 D.P.R. 606 (1986).

As was recently noted by the Court in Kanter v. Barr, 919 F. 3d 437 (7th 2019), over the history of the United States, "Courts were consistent and explicit about the difficulty of trying to apply the doctrine of civil death outside the context of the death penalty. See, e.g., Shapiro v. Equitable Life Assur. Soc. of U.S., 182 Misc. 678, 45 N.Y.S.2d 717 (N.Y. Sup. Ct. 1943) ("Palpable anomaly inevitably results from attempting to attribute civil death, not only to persons about to be executed, but, also, to persons who may remain physically alive for many years and also may be paroled of pardoned."); Byers v. Sun Sav. Bank, 41 Okla. 728, 139 P. 948, 949 (1914) ("[Civil death] had its origin in the fogs and fictions of feudal jurisprudence and doubtlessly has been brought forward into modern statutes without fully realizing either the effect of its literal significance or the extent of its infringement upon the spirit of our system of government. At any rate, the full significance of such statutes have never been enforced by our courts for the principal reason that they are out of harmony with the spirit of our fundamental laws and with other provisions of statutes."); Avery v. Everett, 110 N.Y. 333, 18 N.E. 155 (1888) ("Any one who takes the pains to explore the ancient and in many respects obsolete learning connected with the doctrine of civil death in consequence of crime, will find that he has to grope his way along paths marked by uncertain, flickering,

and sometimes misleading lights; and he cannot feel sure that at some point in his course he has not missed the true road.")"

B. R.I.G.L. § 13-6-1 is unconstitutional in that it cannot bar an inmate from proceeding in state court under 42 U.S.C. § 1983 for a violation of the rights secured to him by the United States Constitution.

Rhode Island General Laws § 13-6-1 provides:

> Every person imprisoned in the adult correctional institutions for life shall, with respect to all rights of property, to the bond of matrimony and to all civil rights and relations of any nature whatsoever, be deemed to be dead in all respects, as if his or her natural death had taken place at the time of conviction. However, the bond of matrimony shall not be dissolved, nor shall the rights to property or other rights of the husband or wife of the imprisoned person be terminated or impaired, except on the entry of a lawfully obtained decree for divorce.

This statute is blatantly unconstitutional under federal law and cannot bar an inmate from pursuing his federal remedies in state court.

The First Amendment to the United States Constitution guarantees that government will make no law abridging the right of the people to petition the government for redress of grievances. Central to this right to petition is the right of access to the courts by all people, including incarcerated individuals. California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508, 510 (1971); Johnson v. Avery, 393 U.S. 483 (1969). Accordingly, the United States Supreme Court has held that inmates cannot be denied the opportunity to petition courts for writs of habeas corpus, Ex Parte Hull, 312 U.S. 546, 85 L. Ed. 1034, 61 S. Ct. 640 (1941), and any restriction which unduly impinges upon a prisoner's right to seek habeas corpus relief is invalid. Johnson v. Avery, supra.

The Supreme Court has expanded this principle and recognized that prisoners possess the right of access to the courts for the purpose of filing suits that seek the redress

of constitutional violations. Procunier v. Martinez, 416 U.S. 396, 419 (1974); see Cruz v. Beto, 405 U.S. 319, 321 (1972).

It has been said that: "It is beyond dispute that the right of access to the courts is a fundamental right protected by the [United States] Constitution." Graham v. National Collegiate Athletic Ass'n, 804 F.2d 953, 959 (6th Cir.1986). In fact, the right of access to the courts finds support in several provisions of the Constitution including: the Due Process Clause of the Fourteenth Amendment, Wolff v. McDonnell, 418 U.S. 539, 579, 94 S.Ct. 2963, 2986, 41 L.Ed.2d 935 (1974), the Equal Protection Clause, Pennsylvania v. Finley, 481 U.S. 551, 557, 107 S.Ct. 1990, 1994, 95 L.Ed.2d 539 (1987), the First Amendment, Turner v. Safley, 482 U.S. 78, 84, 107 S.Ct. 2254, 2259, 96 L.Ed.2d 64 (1987)(citing Johnson v. Avery, 393 U.S. 483, 89 S.Ct. 747, 21 L.Ed.2d 718 (1969)), and the Privileges and Immunities Clause of Article IV, see, e.g., Chambers v. Baltimore & Ohio R.R. Co., 207 U.S. 142, 148, 28 S.Ct. 34, 35, 52 L.Ed. 143 (1907); Smith v. Maschner, 899 F.2d 940, 947 (10th Cir.1990). The right of access in its most formal manifestation protects a person's right to physically access the court system. Without more, however, such an important right would ring hollow in the halls of justice. See Chambers, 207 U.S. at 148, 28 S.Ct. at 35 ("In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship...."). Access to courts does not only protect one's right to physically enter the courthouse halls, but also insures that the access to courts will be "adequate, effective and meaningful." Bounds v. Smith, 430 U.S. 817, 822, 97 S.Ct. 1491, 1495, 52 L.Ed.2d 72 (1977). See also McCulston v. Wanicka, 483 So. 2sd 489 (Fla App. 2d 1986) and cases therein cited for proposition that the Florida Civil Death act is unconstitutional denial of rights of prisoners to go to have their matters heard in court.

These cases support the general proposition that inmates cannot be denied access to courts to seek relief from or remedies for certain unconstitutional activities which are intimately and directly related to their incarceration, such as the Plaintiff is doing in the instant action.

42 U.S.C. § 1983 authorizes a "suit in equity, or other proper proceeding for redress" against any person who, under color of state law, "subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution." Plaintiff's complaint states such claims. Plaintiff is asserting claims for violation of his constitutional rights against the Defendant State of Rhode Island that challenges the conditions of his prison confinement, seeking monetary and injunctive relief. These claims may be brought pursuant to § 1983 in the first instance. See Muhammad v. Close, 540 U.S. 749, 751 (2004) (per curiam).

Accordingly, it goes almost without saying, that federally guaranteed fundamental rights, including those set forth in the Eighth Amendment, cannot be stripped by the state governments from any individual, to include individuals sentenced to life in prison and are civilly dead under R.I.G.L. § 13-6-1. As was noted in Brown v. Board of Education, 349 U.S. 294, 300, 75 S.Ct. 753, 756, 99 L.Ed. 1083 (1955) "[I]t should go without saying that the vitality of th[e] constitutional principles [announced in Brown I,] cannot be allowed to yield simply because of disagreement with them." Similarly in Schuette v. BAMN, 572 U.S. ——–, 134 S.Ct. 1623, 188 L.Ed.2d 613 (2014), the Supreme Court noted that "[t]he freedom secured by the Constitution consists, in one of its essential dimensions, of the right of the individual not to be injured by the unlawful exercise of governmental power." Id., at ——–, 134 S.Ct., at 1636. Thus, when the rights of persons are violated, "the Constitution requires

redress by the courts," notwithstanding the more general value of democratic decision making. Id., at ——, 134 S.Ct., at 1637. This holds true even when protecting individual rights affects issues of the utmost importance and sensitivity.

Directly on point is the decision in Haywood v. Drown, 556 U.S. 729, 736 (2008). In it an inmate filed a 42 U.S.C. § 1983 action in a New York State Court against individual corrections officers and that suit was initially dismissed because it was barred by a New York Statute. Id. The United States Supreme Court held the statute that prevented the inmate from suing the individual officers by removing subject matter jurisdiction from the court was unconstitutional in light of the provisions of 42 U.S.C. § 1983 which otherwise allowed the inmate to sue the officers individually. Id. In so holding, the Supreme Court stated: "a State cannot employ a jurisdictional rule 'to dissociate [itself] from federal law because of disagreement with its content or a refusal to recognize the superior authority of its source.' . . ." In other words, although States retain substantial leeway to establish the contours of their judicial systems, they lack authority to nullify a federal right or cause of action they believe is inconsistent with their local policies. 'The suggestion that [an] act of Congress is not in harmony with the policy of the State, and therefore that the courts of the State are free to decline jurisdiction, is quite inadmissible, because it presupposes what in legal contemplation does not exist.'" (citations omitted).

This principle has been recognized by the Rhode Island Supreme Court in L.A. Ray Realty v. Town Council, 698 A.2d 202, 214 (R.I. 1997) where our Court stated: "state law requirements may not be applied if their application would contravene the purpose of a federal law or policy, or if different outcomes would result depending on whether 42 U.S.C. § 1983 claims were brought in federal or state court, thereby thwarting the federal interest in uniformity." It is therefore without question that the Plaintiff may assert his 42 U.S.C. §

1983 claims in this Court for violations of his constitutional rights irrespective of what R.I.G.L. § 13-6-1 provides.

Other state courts addressing the exact same issue caused by their civil death statutes have also determined that their statute could not prevent the inmate from filing an action in state court under 42 U.S.C. § 1983 to protect their constitutional rights. In McCulston v. Wanicka, 483 So. 2sd 489 (Fla App. 2d 1986), the Florida Court of Appeals addressed their civil death statute. It determined that the statute impermissibly interfered with the inmates access to state court, stating as follows:

> Even prisoners enjoy a constitutional right of "access to the courts." Coleman v. Peyton, 362 F.2d 905 (4th Cir.), cert. denied, 385 U.S. 905, 87 S.Ct. 216, 17 L.Ed.2d 135 (1966). Though not among the rights specifically set forth in the Bill of Rights, the right of access to the courts stems from the first amendment right to petition for redress of grievances. Thompson. Such right may be traceable, in fact, to the Magna Carta. Flood v. State ex rel. Homeland Co., 95 Fla. 1003, 117 So. 385 (1928). The Supreme Court has mentioned this right of access without specifically applying it to civil litigation unrelated to the prisoner's incarceration. See, e.g., Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974). However, numerous other courts have drawn no distinction between prisoners seeking such relief as habeas corpus and those wishing to file civil actions generally. "[T]he constitutional protection of access to the courts ... includes access to all courts, both state and federal, without regard to the type of petition or relief sought." Hooks v. Wainwright, 352 F.Supp. 163, 167 (M.D.Fla.1972). See also Corpus v. Estelle, 551 F.2d 68, 70 (5th Cir.1977)("[R]easonable access to the courts must include access in general civil legal matters."); Souza v. Travisono, 368 F.Supp. 959 (D.R.I.1973).
>
> We must conclude, therefore, that the right of access to the courts cannot be reconciled with such all-encompassing statutory provisions as [the Florida Civil Death Act] section 944.292. In Holman v. Hilton,712 F.2d 854 (3d Cir.1983), the court of appeals considered a New Jersey statute which barred any actions by prisoners against public entities or employees. The court found that the statute, by delaying any action until after the prisoner's release from confinement, unreasonably deprived prisoners of a protected property right, namely, a cause in action. A similar result was reached by the Alaska Supreme Court in Bush v. Reid, 516 P.2d 1215 (Alaska 1973). There, a statute suspending civil rights, including the right to initiate civil actions, was held to violate both the due process and equal protection clauses of the fourteenth amendment. See also Bilello v. A.J. Eckert Co., 42 A.D.2d 243, 346 N.Y.S.2d2 (1973)."
>
> We recognized in McCray that " '(a) n inmate's right of unfettered access to the courts is as fundamental a right as any other he may hold. . . . All other rights of an inmate are illusory without it . . . .' " 509 F.2d at 1337, citing Adams v. Carlson, 7

Cir. 1973, 488 F.2d 619, 630. McCulston v. Wanicka, 483 So. 2sd 489 (Fla App. 2d 1986).

By attempting to enforce R.I.G.L. § 13-6-1, the State is in essence arguing that the Plaintiff's ability to enforce his Federal Rights should be nullified and he should be barred from appearing before this court to bring a suit to secure a remedy for the violation of his Eighth Amendment rights because he is a civil non-entity. Such a contention, if true, gives the State, by the Department of Corrections and its employees, the absolute right to treat prisoners, such as the Plaintiff, who have received life sentences in whatever manner they choose. The State could choose not to feed these individuals, deny them medical care, torture them, or do anything short of execute them and prisoners, such as the Plaintiff would, under the Defendants' analysis, have absolutely no redress available to them from the State Court.

The plain language of the Federal Constitution provides that "this Constitution, and the laws of the United States which shall be passed in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the Contrary notwithstanding." Ableman v. Booth, 62 U.S. 506 (1859). Rhode Island General Laws § 13-6-1 is subordinate to Federal law in this area under this supremacy clause and is accordingly unconstitutional to the extent it states that the Plaintiff, and other similarly situated, may not proceed with a suit in State Court under 42 U.S.C. § 1983 to seek a remedy through 42 U.S.C. § 1983 for the violation of their otherwise enumerated Constitutional Rights.

Here, the decisions of the Federal Judiciary, and the Federal Laws have outpaced a Rhode Island Statue enacted in 1909, making it blatantly in conflict with a Federal Law, namely 42 U.S.C. § 1983, which allows suits to enforce the Plaintiff's constitutional rights

and as a result R.I.G.L. § 13-6-1 is unconstitutional. Accordingly, the Statute cannot be construed to bar the Plaintiff's claims under 42 U.S.C. § 1983 for violation of his Federal Constitutional Rights. The motion for Summary Judgment, in as much as it applies to claims brought under the Federal Constitution in State Court must be granted.

C. Rhode Island General Laws § 13-6-1 must be declared unconstitutional as it violates numerous provisions of the Rhode Island Constitution.

The Defendants argue that the Plaintiff is denied the ability to seek a remedy for their negligence and the State's violation of the Eight Amendment due to the application of Rhode Island General Laws § 13-6-1. This contention denies the Plaintiff the protections granted to him by Article I, Section 2 of the Rhode Island Constitution. It states: ". . . No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied equal protection of the laws." Id. It also denies him the benefits of Article I, Section 5 of the Rhode Island Constitution which states: "Every person within this state ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which may be received in one's person, property, or character. Every person ought to obtain right and justice freely, and without purchase, completely and without denial; promptly and without delay; conformably to the laws." As the Plaintiff's constitutional rights supersede this statue, and make it unconstitutional, summary judgment should enter against these defendants on this defense.

1. **Enforcement of this statute acts to deny the Plaintiff His Substantive Due Process**

In State v. Germane, 971 A.2d 555 (R.I. 2009), this Court stated that the due process clause of the federal constitution and the parallel provision of our state's constitution "provides heightened protection against government interference with certain fundamental

rights and liberty interests." Citing Washington v. Glucksberg, 521 U.S. 702, 720, 117 S.Ct. 2258, 138 L.Ed.2d 772 (1997). Those cases addressing substantive due process claims recognize that there are certain rights so "implicit in the concept of ordered liberty" that "neither liberty nor justice would exist if they were sacrificed." Palko v. Connecticut, 302 U.S. 319, 325, 326, 58 S.Ct. 149, 82 L.Ed. 288 (1937). "Such rights are more fundamental and profound than the several liberty interests that have been deemed sufficient to trigger the requirements of procedural due process. Consequently, the fundamental rights protected by substantive due process are substantially shielded from adverse state actions regardless of the procedures used by the state." State v. Germane, 971 A.2d at 583. citing Glucksberg, 521 U.S. at 721, 117 S.Ct. 2302. Substantive Due process provides a "guarante[e] more than fair process," Washington v. Glucksberg, 521 U.S. 702, 719, 117 S.Ct. 2258, 2267, 138 L.Ed.2d 772 (1997), and to cover a substantive sphere as well, "barring certain government actions regardless of the fairness of the procedures used to implement them," Daniels v. Williams, 474 U.S. 327, 331, 106 S.Ct., at 665 (1986); see also Zinermon v. Burch, 494 U.S. 113, 125, 110 S.Ct. 975, 983, 108 L.Ed.2d 100 (1990) (noting that substantive due process violations are actionable under § 1983).

Fundamental rights include those guaranteed by the Bill of Rights, and by extension, as recognized by this Court in State v. Germane, the Rhode Island Constitution, as well as certain liberty and privacy interests implicit in the due process clause and in the penumbra of constitutional rights. See Glucksberg, 521 U.S. at 720, 117 S.Ct. 2302. These special liberty interests have been held to include "the rights to marry, to have children, to direct the education and upbringing of one's children, to marital privacy, to use contraception, to bodily integrity, and to abortion." Id. (citations omitted).

In order to prevail on the substantive due process prong of a constitutional argument, Plaintiff is required to identify a fundamental right which is "objectively, deeply rooted in this Nation's history and tradition." Glucksberg, 521 U.S. at 720–21, 117 S.Ct. 2302 (internal quotation marks omitted). Here, the Plaintiff is being denied the ability to appear in court and proceed to seek a remedy for the Defendants' negligence and the State Actors Eighth Amendments violations. These are protections granted to him by the Rhode Island Constitution. See Article I, Section 2 of the Rhode Island Constitution which states: ". . . No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied equal protection of the laws," and Article I, Section 5 of the Rhode Island Constitution that provides: "Every person within this state ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which may be received in one's person, property, or character. Every person ought to obtain right and justice freely, and without purchase, completely and without denial; promptly and without delay; conformably to the laws."

In Gallop v. Adult Correctional Institutions, 182 A.3d 1137 (2018), the constitutionality of R.I.G.L. § 13-6-1 was not challenged and its constitutionality was not decided by the Court. In Gallop, the Court in held the Superior Court did not have authority to hear the merits of a plaintiff's case where he was sentenced to life in prison at the ACI in light of § 13-6-1 because the plaintiff's civil rights were extinguished by operation of law once his conviction became final. Under the statute, Gallop said the Superior Court had no ability to hear Plaintiff's case as it was in excess of the Superior Court's jurisdiction which was removed by the legislative enactment. Id at 1141. This statute, by its plain language violates both Article I, Section 2 and Article I, Section 5 of the Rhode Island Constitution when it purports to supersede all of his Plaintiff's constitutional rights.

This is not a case of Turner v. Safely, 482 U.S. 78 (1987) where there is a limitation on a right by a prison regulation or state law. This is a case where the state purports to eliminate all rights a prisoner would have under the state constitution for the time the prisoner is serving a sentence of life at the Rhode Island Adult Correctional Facility. There cannot possibly be a legitimate reason to remove from a prisoner each and every on of their state constitutional rights. There are no alternative means for the prisoners to vindicate these state constitutional rights, which in this instance include a right to bring a common law claim and claim for violation of his constitutional rights, than by coming to state court, which according to Gallop, they cannot under the language of the Civil Death Act. This isn't a law or regulation impinging on the prisoner's rights. It is a law removing their rights in full. Accordingly, the statute is unconstitutional under substantive due process grounds.

2. **The statute specifically fails under an Art. 1, sec 5 analysis as it denies Plaintiff the right to come to court to seek a remedy.**

The Civil Death Statute, § 13-6-1, itself cannot be construed as anything other than a denial of the rights that a Plaintiff inmate, sentenced to life, has to go to the state courts and be heard on his claims. The statute, therefore is constitutionally infirm under the Rhode Island Constitution under art. I, sec. 5., which expressly guarantees to Plaintiffs, of whatever type, those minimum rights. He is in essence denied his substantive due process rights on any claims he might have against who ever the tortfeasor granted to him by our Constitution.

In Kennedy v. Cumberland Engineering Co., Inc., 471 A.2d 195, 198 (1984), the Court held that: "[A]rt. I, sec. 5, of the Rhode Island Constitution should not be interpreted to bar the Legislature from enacting any laws that may limit a party from bringing a claim in our courts. . . . "The total denial of access to the courts for adjudication of a claim even

before it arises, however, most certainly 'flies in the face of the constitutional command found in art. 1, § 5,' Lemoine v. Martineau, 115 R.I. at 240, 342 A.2d at 621," Kennedy at 199. "It would be manifestly unjust and inconsistent with art. I, sec. 5, to bar plaintiff's right to access to the courts absolutely." Kennedy at 200.

The Kennedy Court went on to state that:

> "Other cases of this court that have dealt with art. I, sec. 5, of the Rhode Island Constitution clearly show an intent to give broader, independent meaning and application to the first sentence [of art I, § 5] (Every person within this state ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which may be received in one's person, property, or character). In the recent case of Lemoine v. Martineau, 115 R.I. 233, 342 A.2d 616 (1975), this court held that a statute excusing legislators from all court appearances while the Legislature is in session "flies in the face of the constitutional command found in art. I, § 5." (Emphasis added.) Id. at 240, 342 A.2d at 621. Cf. Martin v. Hammond, 89 R.I. 98, 151 A.2d 114 (1959) (the court analyzed, under R.I. Const. art. I, sec. 5, the trial justice's discretion in considering a motion for a continuance); Molloy v. Collins, 66 R.I. 251, 18 A.2d 639 (1941) (although rejecting the plaintiff's contention, the court recognized the application of the section to personal injuries). These cases are factually different from the case before us. However, they clearly point to a less-restrictive reading of the section than that urged by defendant. To hold otherwise would require that we ignore the entire first sentence of art. I, sec. 5. A basic premise of constitutional interpretation is that every clause must be given its due force, meaning and effect and that no word or section must be assumed to have been unnecessarily used or needlessly added." Kennedy at 199.

As stated in Boucher v. Sayeed, R.I., 459 A.2d 87, 93 (1983), where the Court struck down a statute that treated medical-malpractice plaintiffs differently from tort plaintiffs as a whole under this provision of the constitution, "The statute constitutes special class legislation enacted solely for the benefit of specially defined defendant(s) * * *. " Even where this court has upheld reasonable limitations, it has stopped short of allowing absolute bars to court access (e.g. Spalding v. Bainbridge, 12 R.I. 244 (1879) (plaintiff's inability to furnish surety for costs because of poverty held not sufficient to bar his action in court)).

In Grzegorzewska v. Women & Infants Hospital of Rhode Island, PC 2012-4882 (J. Lanphear 2015), found that the then enacted R.I.G.L. § 9-1-14 was unconstitutional under

Article I § 5 as it deprived individuals suffering from permanent mental disability of their access to the courts and the remedies that flow from favorable decisions for those individuals.

When interpreting different provision of the Rhode Island Constitution on similar issues pertaining to prisoners, in Bagosian v. Vaccaro, 422 A.2d 1253, fn1 (R.I. 1980), the Court noted that a right to vote stated in the Rhode Island Constitution trumped a state statue that limited that right to vote. It so doing it stated that: "Amendment XXXVIII of the Rhode Island Constitution provides that no individual who is otherwise qualified to vote shall be permitted to vote 'while serving a prison sentence on final conviction of a felony nor subsequent to such imprisonment until the franchise shall have been restored by an act of the general assembly.' R.I.G.L. § 13-6-2, "which preceded the adoption of amendment XXXVIII, provides that any felon who is imprisoned at the Adult Correctional Institutions "shall forever thereafter be incapable of being elected to any office of honor, trust, or profit in this state and of acting as an elector therein, unless such person be expressly restored to such privilege by act of the general assembly."

In Bailey v. Baronian, R.I., 394 A.2d 1338, 1339, 1342 (1978), the Rhode Island Supreme Court held that while disenfranchisement of certain criminals has been a permanent fixture in our Constitution since its adoption in 1842, that the limiting language of [now repealed] § 13-6-2, insofar as it refers to incarceration at the Adult Correctional Institutions, must yield to the constitutional mandate." In fact, in Bailey, the court noted. "No act of the General Assembly can "limit" a provision of the constitution." Bailey at 1342.

Similarly in Smiler v. Napolitano, 911 A.2d 1035, 1040 (2006) the Court stated: "There is a fundamental difference between a statute that categorically precludes all litigants from seeking redress for their injuries and one that lessens the common-law duty of care….

In the latter situation, a litigant's inability to prove that particular conduct breaches a statutory duty does not offend our constitution." Here the statute does because it precludes all ability of the Plaintiff to seek redress for wrongs done to him in state court.

In Davis v. Pullium, 1971 OK 47, 484 P.2d 1306, the Oklahoma Supreme Court assessed its then in effect, civil death statute after a defendant appealed a jury verdict in a personal injury suit arguing the plaintiff, a convicted murderer under a life sentence, had no right to bring the action against him. After serving a period of time in a penal institution, the plaintiff was paroled, but not pardoned. The decision which allowed the Plaintiff a remedy for the wrong was initially reversed by the Court of Appeals, but appealed to the Supreme Court of Oklahoma. Justice Hodges in a compelling opinion held Article 2, Section 6 of the Oklahoma Constitution, mandated a reversal. This provision stated: "The courts of justice of the State shall be open to every person, and speedy and certain remedy afforded for every wrong and for every injury to person, property, or reputation; and right and justice shall be administrated without sale, denial, delay or prejudice." Justice Hodges was emphatic in holding civil death is not a defense to a personal injury action. "Rumors of plaintiff's death are greatly exaggerated." As our state constitution allows similar rights of access to the courts and a remedy for all wrongs the Civil Death Statute needs to be held unconstitutional and the Plaintiff allows to proceed with his claims for negligence.

In addition, as the denial of access to the Rhode Island courts occurs pre-filing of any suit in state court by the Plaintiff, this statute denies Plaintiff "effective" and "meaningful" access to the courts. Bounds, 430 U.S. at 822, 97 S.Ct. at 1495. This happens because the Gallop Decision states that the legislatures' action, in enacting the Civil Death Act, serves to foreclose him from filing suit in state court and render ineffective any state court remedy he previously may have had because such claims are outside the Courts

jurisdiction. While in many instances, other state courts have addressed this issue by tolling the statute of limitations or allowing for a "spoliation of evidence" lawsuits, Rhode Island has not done either, allowing only for the appointment of a an administrator of the prisoner's estate by a creditor of the prisoner, not in any way allow the prisoner to assert a suit even when they could be paroled, pardoned, or a conviction vacated. See R.I.G.L. § 13-6-4.

If this Court were to enforce the provisions of R.I.G.L. § 13-6-1, as the defendants request, it would abridge the Plaintiff's rights and deprive the Plaintiff of his ability to appear before this court to seek relief for the injury he suffered due to the Defendants' negligence and the state's violation of both his Federal Constitutional Rights which grant him due process under the laws to assert these claims.

In Boddie v. Connecticut , 401 U.S. 371, 377 (1971), Justice Harlan, in discussing the rights of person's seeking access to the judicial process stated: "first, that due process requires, at a minimum, that absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard." If R.I.G.L. § 13-6-1 is enforced, the Plaintiff would be left with no meaningful opportunity to be heard. There is no process available to him outside of Court by which the plaintiff can get a remedy from the Defendants for the wrongs done him which Plaintiff claims rise to the level of negligence and a violation of the Eighth Amendment to the United States Constitution by the State.

When addressing Civil Death statutes, courts have previously held they were unconstitutional and violated procedural due process requirements. In Bilello v. A. J. Eckert Co., 42 A.D.2d 243, 246 (NY 3rd App Div. 1973) the Court, addressing a similar civil death statute as ours in New York stated that because it: "prohibits appellant from prosecuting his

appeal, the statute is unconstitutional as violative of the Fifth and Fourteenth Amendments of the United States Constitution" in as much as it violates both the Equal Protection and Due Process clause because it left the Appellant with no meaningful opportunity to be heard calling the statute a "relic of medieval fiction" and an "outdated and inscrutable common law concept" (Citations omitted).

Similarly, in McCuiston v. Wanicka, 483 So. 2d 489, 491 (Fla. 2d 1986) the Court held that a Florida statute that suspended the civil rights of persons convicted, imputing civil death while they were incarcerated, violated the prisoner's rights to due process under article 1, section 21, of the Florida Constitution, which guaranteed access to the courts to "all persons." In doing so, it stated that: "The courts of this state should scrutinize carefully any actions taken by the legislature which may place impermissible burdens on the exercise of the right of access to the courts. . . . In the absence of an overpowering public necessity, the legislature is without power to abolish such a right without providing a reasonable alternative. . . Any restrictions must be liberally construed in favor of the constitutional right. . . 'The law abhors the denial of access to the courts for any other reason than a wilful abuse of the processes of the court.'" Id. at 492. (citations omitted).

There is no justification that could possibly be put forward that substantiates the complete bar the Plaintiff and other inmates with life sentences face if R.I.G.L. § 13-6-1 is interpreted to strip from them their ability to file a civil action in this court. There is no compelling governmental interest that can possibly be served by denying Plaintiff, and other individuals who are serving life sentences access to the Court to seek a remedy for the Defendants' constitutional violations. The statute as written is overly broad – denying the Plaintiff total access to court – and not narrowly tailored to one identifiable interest of the state. If the statute is upheld and the Plaintiff is denied all access to file civil actions in

Court, the Plaintiff and others with life sentences are placed at great risk of harm as the Defendants will be able to do whatever they want to that class of prisoner, without the Plaintiff being able to seek any judicial remedy to rectify those wrongs and with almost complete impunity.

3. **The Statute violates the Plaintiff's rights to equal protection under Article I Section 2 and Article I Section 5 of the Rhode Island Constitution.**

R.I.G.L. § 13-6-1 can only be read to infringe on the constitutional rights of the Plaintiff and all other inmates serving life sentences as it literally suspends all of their civil rights. "'[W]here the legislation infringes upon explicit constitutional rights . . . legislative enactments must be narrowly drawn to express only a compelling state interest. " Allard v. Department of Transp., 609 A.2d 930, 937 (R.I. 1992). However, under the strict language of the statue it does not apply to inmate sentenced to life who are housed out of state and does not apply to other inmates who are in effect serving life sentences, being sentenced to sentences of more than 100 years but are not subject to the chilling affects of the Civil Death act. Accordingly, to survive constitutional scrutiny, R.I.G.L. § 13-6-1 must pass the strict scrutiny test.

In order to justify such a statute under the strict scrutiny test, the state must demonstrate: (1) the existence of a compelling governmental interest, (2) that the challenged provision is necessary to advance that interest, and (3) that the provision is narrowly tailored to do so. See Austin v. Mich. State Chamber of Commerce, 494 U.S. 652, 657 (1990); see Citizens Against Rent Control/Coal. for Fair Hous. v. Berkeley, 454 U.S. 290, 298-300 (1981). It cannot do so here.

Rhode Island General Laws §13-6-1 as written denies to the Plaintiff his ability to exercise any of his civil rights while he is incarcerated with a life sentence at the ACI. It does

not deny him these rights if he is imprisoned in Wyatt or Federal Prison or even transferred out of state. This denies to the Plaintiff equal protection under the law and his ability to seek a remedy which is guaranteed to him by Article I, Section 5 of the Rhode Island Constitution which provides: "Every person within this state ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which may be received in one's person, property, or character. Every person ought to obtain right and justice freely, and without purchase, completely and without denial; promptly and without delay; conformably to the laws." In essence this means that despite claiming Defendants negligence and a violation of his Eighth Amendment rights the Plaintiff, because of this statute, is denied any remedy, where as inmates with similar claims, housed out of state, or with what are equivalent to life sentences are not so penalized.

As the Court stated in Cooper v. Aaron, 358 U.S. 1 (1958), "[t]he command of the Fourteenth Amendment is that no "State" shall deny to any person within its jurisdiction the equal protection of the laws. This includes the Federal Laws. "A State acts by its legislative, its executive, or its judicial authorities. It can act in no other way. The constitutional provision, therefore, must mean that no agency of the State, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws. Whoever, by virtue of public position under a State government, . . . denies or takes away the equal protection of the laws, violates the constitutional inhibition; and as he acts in the name and for the State, and is clothed with the State's power, his act is that of the State. This must be so, or the constitutional prohibition has no meaning." Ex parte Virginia, 100 U.S. 339, 347 (1879). Thus, the prohibitions of the Fourteenth Amendment extend to all action of the State denying equal protection of the laws; whatever the agency of the State taking the action, see Virginia v. Rives, 100 U.S. 313 (1879);

Pennsylvania v. Board of Directors of City Trusts of Philadelphia, 353 U.S. 230 (1957); Shelley v. Kraemer, 334 U.S. 1 (1948); or whatever the guise in which it is taken, see Derrington v. Plummer, 240 F.2d 922 (5th Cir. 1956); Department of Conservation and Development v. Tate, 231 F.2d 615 (4th Cir. 1956). Article VI of the Constitution makes the Constitution the "supreme Law of the Land." This means that the Statute cannot be construed to deny state inmates the ability to come before the Court and assert their federal claims, which the statute purports to do.

In Delorme v. Pierce Freightlines Co., 353 F. Supp. 258, 260 (Or. D.C. 1973), the Court using a much less stringent rational basis test than that which is required here due to the right to a remedy being set forth in our state constitution, found that inmates as a whole, under the Equal Protection Clause, could not as a group be prevented from filing civil litigation as while: "there is no dispute that the goals of preventing pointless litigation and rehabilitating prisoners are constitutionally permissible, [if the Oregon civil death statute] is to withstand the test of the Equal Protection Clause, defendants must also show that these goals are rationally related to the action taken by the State, which suspends the right of an imprisoned felon to litigate his legal claims. Defendants have not made such a showing. We find that the means used here to accomplish the State's purposes are impermissibly broad. . . The State cannot reduce frivolous litigation by excluding from court an entire class of litigants because some members of the class may assert improper claims. Much less onerous ways are available to protect the judicial process. See Boddie v. Connecticut, 401 U.S. 371, 381-382, 91 S. Ct. 780, 28 L. Ed. 2d 113 (1971). We find no basis to believe the State's contention that rehabilitation is impaired by allowing prisoners to litigate their claims. The State's justifications are particularly unconvincing in light of the harsh effect on [Plaintiff] and other prisoners who may forever lose their access to the legal machinery to redress

legitimate complaints. Others who do not forever lose their claims are forced to delay their actions months or years until their release from prison. Such delays frequently deny them relief."

Here, because the plaintiff is denied both his right to appear in court and his right to a remedy is set forth in Article I § 2 and Article I § 5 of the Rhode Island Constitution, as these are enumerated constitutional rights, strict scrutiny analysis applies. See Allard v. Department of Transp., 609 A.2d, 930, 937 (R.I. 1992). Simply put, there is no compelling governmental interest that can be stated that would justify denying the Plaintiff, a prisoner with a life sentence, complete access to the Court and "a remedy for all of the wrongs done to him" which is otherwise available to him under Article I § 2 and 5 of the Rhode Island Constitution to otherwise remedy his claimed violations caused by the Defendants' negligence and state actors violation of his Eighth Amendment rights. There cannot possibly even be a rational basis for this blanket denial.

The State has for years been sued by individual prisoners, to include prisoners who have been serving life sentences. There is nothing that would suggest that the Defendants and the State should get a free pass on the wrongs committed by the Department of Corrections and its employees against these inmates or their own negligence, whether that be as pled, as in this instance, due exposure to knowing hazardous unprotected steam pipe conditions or in other instances due to what might even be more egregious conduct toward an inmate with a life sentence such as rape of the inmate, outright denial of medical care or food to the inmate, or even torture of that inmate at the hands of one of its correctional officers. The State can put forth nothing that would support the denial of the total access to the Courts to avenge these wrongs that would support a justifiably narrowly tailored State interest that could be legitimate in light of these basic human rights issues that are remedied

by these actions. Accordingly, the statute fails constitutional muster under the State Constitution, it should be declared unconstitutional and the motion to for summary judgment should be granted.

V. CONCLUSION

WHEREFORE, Plaintiff request that the motion for summary judgment be granted and that R.I.G.L. § 13-6-1 be declared unconstitutional for the reasons set forth herein.

Plaintiff,
Cody Allen-Zab,
By his attorney

/s/ Sonja L. Deyoe
Sonja L. Deyoe #6301
Law offices of Sonja L Deyoe
395 Smith Street
Providence, RI 02908
(401) 864-5877
sld@the-straight-shooter.com

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of June 2019, I filed a copy of the above memorandum in the Superior Court Electronic Filing system and that it was served electronically on defense counsel and a copy thereof was hand delivered to the Attorney General on June 3, 2019 and a hard copy was delivered to judicial chambers on the same day.

/s/ Sonja L. Deyoe